No. 15344.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

TSEUNG CHU, Also Known as BOW QUONG CHEW, Also Known as TSEUNG BOWQUONG CHEW, Also Known as THOMAS BOWQUONG CHEW,

Appellant,

vs.

GORDON L. CORNELL, Acting Officer in Charge of United States Department of Justice, Immigration and Naturalization Service, of Los Angeles, California,

Appellee.

BRIEF FOR APPELLEE.

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,
JAMES R. DOOLEY,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California,
Attorneys for Appellee.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

STATUTES

TEXTBOOK

No. 15344.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

TSEUNG CHU, Also Known as BOW QUONG CHEW, Also Known as TSEUNG BOWQUONG CHEW, Also Known as THOMAS BOWQUONG CHEW,

Appellant,

vs.

GORDON L. CORNELL, Acting Officer in Charge of United States Department of Justice, Immigration and Naturalization Service, of Los Angeles, California,

Appellee.

BRIEF FOR APPELLEE.

Jurisdiction.

Appellant, plaintiff below, brought action in the District Court for review of an order of deportation outstanding against him, and praying that such order be declared void [R. 3-15].[1] Judgment was entered in favor of appellee [R. 52]. The Court below had jurisdiction of appellant's action under the provisions of Section 10 of the Act of June 11, 1946 (Administrative Procedures Act), 60 Stat. 243, 5 U. S. C. A., Sec. 1009 (*Shaughnessy v. Pedreiro,* 349 U. S. 48 (1955)) and its judgment, being a final decision, jurisdiction is conferred upon this Court by 28 U. S. Code, Section 1291.

---

[1]"R." refers to the Printed Transcript of Record. "Br." indicates references to appellant's Opening Brief. Exhibits to the deportation hearing which were attached in numerical order and which are included as part of Defendant's Exhibit A will be referred to as "Hg. Ex. .....".

Statement of the Case.

Appellant is an alien, a native of China [R. 5]. He last entered the United States on August 11, 1953, as a returning resident alien upon presentation of a non-quota immigrant visa issued on April 15, 1953, at the American Consulate General at Hong Kong [R. 5, Hg. Ex. 5]. After deportation hearings held pursuant to a Warrant of Arrest [R. 15-16, Hg. Ex. 1], appellant was ordered deported from the United States by a Special Inquiry Officer on October 3, 1955 upon the following two grounds: (1) that prior to his last entry into the United States he had been convicted of a crime involving moral turpitude; (2) that he had procured a visa for such last entry by fraud or by wilfully misrepresenting a material fact [R. 39-41]. At the deportation hearings relating to appellant there was received in evidence and made a part of the record a judgment of the United States District Court for the Southern District of California, dated March 27, 1944, wherein appellant was convicted on his plea of *nolo contendere* of violating Title 26, U. S. C., Sec. 145(b) (1939 Int. Rev. Code) by wilful attempts to evade and defeat income tax [R. 40-41, Hg. Exs. 4 and 7]; and the Special Inquiry Officer found that appellant's visa, issued on April 15, 1953 [Hg. Ex. 5] had been procured by fraud or by wilfully misrepresenting a material fact through appellant's non-disclosure of his conviction on his visa application [Deft. Ex. "A"].

On December 17, 1954, an administrative appeal was taken by appellant from the decision of the Special Inquiry Officer; and on October 3, 1955, this appeal was dismissed by the Board of Immigration Appeals, Department of Justice. On October 27, 1955, a Warrant of

Deportation was issued directing that appellant be deported from the United States [R. 41, Deft. Ex. A].

On November 4, 1955 appellant filed a Complaint in the court below for review of the order of deportation outstanding against him and praying that this order be declared void and of no force and effect [R. 3-15]. The District Court upheld the validity of the order and warrant of deportation and entered judgment in favor of appellee [R. 46-52].

Issues Presented.

1. Does the crime of which appellant was convicted, wilful attempts to evade and defeat the income tax in violation of Title 26, United States Code, Section 145(b), constitute a crime involving moral turpitude within the meaning of Section 212(a)(9) of the Immigration and Nationality Act?

2. Was appellant's conviction for violating Title 26, United States Code, Section 145(b), a material fact which appellant was under a duty to disclose in his application for an immigration visa?

3. Was appellant under a duty to disclose his conviction for violating Title 26, United States Code, Section 145(b) in his application for an immigration visa notwithstanding the fact that such conviction was upon his plea of *nolo contendere?*

4. Does the phrase "crime involving moral turpitude" have a sufficiently definite meaning to afford a constitutional standard for deportation, both on its face and as applied to appellant's conviction for violation of Title 26, United States Code, Section 145(b)?

Statutes Involved.

Section 145(b) of the Internal Revenue Code of 1939, 53 Stat. 63, 26 U. S. C. A., Sec. 145(b), provides in pertinent part:

> "Any person . . . who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter . . . shall be guilty of a felony. . . ."

Section 212(a) of the Immigration and Nationality Act of 1952, 66 Stat. 182, 8 U. S. C. A., Sec. 1182(a), insofar as is pertinent to this proceeding, provides:

> "(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:
>
> * * * * * * * *
>
> "(9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense). . . ."
>
> * * * * * * * *
>
> "(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;"

Section 241(a)(1) of the Immigration and Nationality Act of 1952, 66 Stat. 204, 8 U. S. C. A., Sec. 1251(a)(1) provides:

> "(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> "(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;"

ARGUMENT.

I.

The Crime of Which Appellant Was Convicted, Wilful Attempts to Evade and Defeat the Income Tax in Violation of Title 26, United States Code, Section 145(b), Constitutes a Crime Involving Moral Turpitude Within the Meaning of Section 212(a)(9) of the Immigration and Nationality Act.

A. The Crime of Wilfully Attempting to Evade or Defeat Income Tax in Its Inherent Nature Involves Moral Turpitude.

Appellee submits that the crime of wilfully attempting to evade or defeat income tax in violation of Section 145 (b) of the Internal Revenue Code of 1939, in its inherent nature involves moral turpitude. This position is supported by the recent decision in *Chanan Din Khan v. Barber,* 147 Fed. Supp. 771 (N. D. Cal., 1957), where the precise issue was involved. In that case the Court, relying upon the leading case of *Jordan v. De George,* 341 U. S. 223 (1951), found that a violation of Section 145(b) is a crime involving moral turpitude, authorizing deportation under the provisions of Section 241(a)(4) of the Immigration and Nationality Act of 1952, 66 Stat. 204, 8 U. S. C. A., Sec. 1251(a)(4).[2] Answering most of the contentions raised by appellant in the instant appeal, the Court declared (pp. 774-775):

> "Section 145(b) speaks in terms of 'wilfulness', which has been defined by the Courts as meaning 'bad faith', 'bad purpose', 'evil motive' and 'tax

---

[2]This section provides for the deportation of an alien who at any time after entry is convicted of two crimes involving moral turpitude.

> evasion motive,' (citations). With these definitions in mind, the Courts have, with apparent unanimity, held that in order for a conviction under § 145(b) to stand, the Government is required to prove that the evading taxpayer had a specific intent to evade taxation, *amounting to an intent to defraud the United States.* Fraud is so inextricably woven into the term, 'wilfully' as it is employed in § 145(b), that it is clearly an ingredient of the offense proscribed by that section. Only by creating unwarranted semantic distinctions could a contrary conclusion be reached." (Emphasis of the Court.)

The cases cited by the Court in support of the above quotation make it abundanly clear that an intent to defraud the United States is a prerequisite to conviction under Section 145(b) (*Spies v. United States,* 317 U. S. 492, 497, 498 (1943); *Legatos v. United States,* 222 F. 2d 678 (C. A. 9, 1955); *Bloch v. United States,* 221 F. 2d 786 (C. A. 9, 1955); *Wardlaw v. United States,* 203 F. 2d 884 (C. A. 5, 1953); *United States v. Raub,* 177 F. 2d 312 (C. A. 7, 1949); *United States v. Clark,* 123 Fed. Supp. 608 (S. D. Cal., 1954). In *Bloch v. United States, supra,* this Court in commenting upon an instruction to the jury in a prosecution under Section 145(b), declared (p. 788):

> "Proceeding then to a consideration of the Court's charge we find the trial Court instructed the jury in part as follows:
>
> > 'The attempt must be wilful, that is, intentionally done with the intent that the government is to be defrauded of the income tax due from the defendant.'
>
> That is a correct statement of the law, because the intent involved in the offense with which appellant

> here was charged is a specific intent involving the bad purpose and evil motive to evade or defeat the payment of his income tax. * * *"

While, as urged by appellant (Br. 20), "wilful" is a word of many meanings, the courts have construed "wilful" as contained in Section 145(b) to require an evil motive to accomplish that which the statute condemns. (*Spies v. United States, supra; United States v. Murdock,* 290 U. S. 389, 395 (1933); *Bloch v. United States, supra; Wardlaw v. United States, supra.*) Since in prosecutions for violations of Section 145(b), the word "wilful" has acquired a fixed meaning; the examples of other minor crimes cited by appellant (Br. 22) wherein the word "wilful" is employed are irrelevant. As the Court pointed out in *Wardlaw v. United States, supra* (p. 885):

> "It is now settled that 'willfully', as used in this offense, means more than intentionally or voluntarily, and includes an evil motive or bad purpose, so that evidence of an actual bona fide misconception of the law, such as would negative knowledge of the existence of the obligation, would, if believed by the jury, justify a verdict for the defendant."

The attitude of the Supreme Court towards the issue here involved was indicated in *Jordan v. De George, supra.* While that case involved a conspiracy to defraud the United States of taxes on distilled liquors instead of a violation of Section 145(b); the Supreme Court, in a footnote to language pointing out that where fraud had been proved, both federal and state courts had universally found moral turpitude (341 U. S. pp. 227-228), apparently placed its stamp of approval upon a state court

decision holding that a violation of Section 145(b) involved moral turpitude (p. 228, fn. 13):

> "* * * One state court has specifically held that *the wilful evasion of federal income taxes constitutes moral turpitude.* Louisiana State Bar Assn. v. Steiner, 204 La. 1073, 16 So. 2d 843 (1944)." (Emphasis added.)

Appellant relies upon *United States v. Scharton,* 285 U. S. 518 (1932) to support his contention that wilful attempts to evade or defeat the income tax do not involve fraud. In the *Scharton* decision, however, the Court was not concerned with whether fraud was necessary for the existence of the crime; but rather whether Congress intended that a six-year statute of limitations should be applicable to the offense. It held that Congress intended, in order for the six year limitations proviso to apply, that the statute "must be specifically couched in terms of fraud" (See. *Chanan Din Khan v. Barber, supra,* at page 775, fn. 5). A similar distinction exists as to *United States v. Noveck,* 271 U. S. 201 (1926), upon which appellant relies.

The decisions in *United States v. Carrollo,* 30 Fed. Supp. 3 (W. D. Mo., 1939) and *United States v. Pendergast,* 28 Fed. Supp. 601, 609 (D. C. Mo., 1939), advanced by appellant to support his view that a violation of Section 145(b) does not involve moral turpitude, antedated *Spies v. United States,* 317 U. S. 492 (1943), where the serious nature of the crime was delineated. In the *Spies* decision the Supreme Court discussed the difference between 26 U. S. C., Sec. 145(a), which is a misdemeanor, and 26 U. S. C., Sec. 145(b), which is a felony. After describing the graduated system of penalties and punishments in connection with income tax violations, the Court

characterized the "serious and inclusive felony" (p. 497) defined in Section 145(b) as the "climax of this variety of sanctions" (p. 497), and as the "gravest of offenses against the revenues" (p. 499).

Moreover, the question of fraud as an element of moral turpitude was not reached in the *Carrolo* case, and the holding that income tax evasion did not involve moral turpitude was no more than a dictum. (See, *Chanan Din Khan v. Barber, supra,* at page 775, fn. 6.) The reasoning of the *Pendergast* decision appears vulnerable, in view of the many factors which may enter into the Government's prosecution of tax evasion cases. (See, Winer, "An Appraisal of Criminal and Civil Penalties in Federal Tax Evasion Cases", 30 Boston Univ. Law Rev., 387, 388-389.) It would seem that failure to prosecute, or even laxity in prosecution, would be unable to modify the inherent nature of the crime.

While *In re Hallinan*, 43 Cal. 2d 243, 272 P. 2d 768 (1954) holds that an intent to defraud is not an essential element of Section 145(b), and that therefore moral turpitude is not necessarily present; this decision seems to have been based primarily upon the *Scharton, Carrollo,* and *Pendergast* decisions previously distinguished. Nor did the court in *Hallinan* mention the apparent approval by the Supreme Court of the United States of the decision in *Louisiana State Bar Ass'n v. Steiner,* 204 La. 1073, 16 So. 2d 843, which reached an opposite result. (See, 341 U. S. 223, at p. 228, fn. 13.) Appellant submits, therefore, that the reasoning in *Chanan Din Khan v. Barber, supra,* is more persuasive than that in *Hallinan* and should be adopted by this Court.

B. The Indictment Upon Which Plaintiff Was Convicted Shows Moral Turpitude.

If the crime of wilful attempts to evade or defeat income tax in violation of Section 145(b) of the Internal Revenue Code of 1939 in its inherent nature involves moral turpitude, the Court need not reach the issue here presented. However, while the question is not free from doubt, appellee believes that the *material facts* as set forth in the indictment may also be considered in determining whether the crime of which appellant was convicted involved moral turpitude. Appellee recognizes that in determining the issue of moral turpitude the Court may not go behind the record of conviction and consider the evidence; however, as the authorities agree, the record of conviction consists of the charge (indictment), plea, verdict, and sentence. (*United States ex rel Zaffarano v. Corsi,* 63 F. 2d 757 (C. C. A. 2, 1933); *Vidal Y Planas v. Landon,* 104 Fed. Supp. 384 (S. D. Cal., 1953); *United States ex rel Teper v. Miller,* 87 Fed. Supp. 285 (S. D. N. Y., 1949); *United States ex rel Guarino v. Uhl,* 27 Fed. Supp. 135 (S. D. N. Y., 1939), reversed on other grounds, 107 F. 2d 399.)

In *United States ex rel Zaffarano v. Corsi, supra,* the Court indicated that moral turpitude might be determined either from the inherent nature of the crime or from matters set forth in the indictment when it said (p. 758):

> ". . . They must look only to the inherent nature of the crime *or to the facts charged in the indictment upon which the alien was convicted*, to find the moral turpitude requisite for deportation for this cause." (Emphasis added.)

While in the *Zaffarano* decision it was necessary for the court to examine the indictment in order to determine under which section of the New York statute the alien was convicted, the Court by its language did not indicate that this was the sole purpose for which the indictment might be considered. Upon Petition for Rehearing it was urged that the decision was inconsistent with the court's prior ruling in *Robinson v. Day,* 51 F. 2d 1022. In the latter case, now relied upon by appellant, the court had said that the particular circumstances under which the crime was committed might not be considered, and that "when by its definition it does not necessarily involve moral turpitude, the alien cannot be deported because in the particular instance his conduct was immoral." In reconciling this apparent inconsistency, the court declared (p. 759):

> "* * * *This language* (language in the Robinson case) *means that neither the immigration officials nor the court reviewing their decision may go outside the record of conviction* to determine whether in the particular instance the alien's conduct was immoral. And by the record of conviction we mean *the charge (indictment), plea, verdict, and sentence.* The evidence upon which the verdict was rendered may not be considered, nor may the guilt of the defendant be contradicted. So construed, there is no inconsistency between that opinion and this; and such is plainly the correct construction, because *it is the specific criminal charge of which the alien is found guilty and for which he is sentenced that conditions his deportation,* provided it involves moral turpitude. * * *" (Emphasis and words in parenthesis added).

In *Vidal Y Planas v. Landon, supra,* the Court considered a statement of the Court's findings as contained in a Spanish judgment in determining that the homicide committed did not involve moral turpitude. The Supreme Court itself in *Jordan v. De George, supra,* referred to the facts as set forth in the indictment. (See, 341 U. S. at p. 225, fn. 5.)

Even without considering the adjectives which appellant characterizes as surplusage (Br. 24), the indictment shows that appellant was convicted on four counts for wilfully attempting to defeat his income tax for the years 1937, 1938, 1939, and 1940. The indictment charges, *inter alia,* that the gross income of appellant for 1937 was $12,556.87; for 1938—$16,298.17; for 1939—$38,925.38; for 1940—$17,321.05; and that plaintiff falsely stated under oath in his income tax returns that his gross income for these four years was only $1,724.42, $3,778.21, $4,976.52, and $2,490.35 respectively. All counts charged that plaintiff concealed from the Collector of Internal Revenue his true and correct gross and net incomes during the four years mentioned. [Hg. Ex. 3.]

Assuming therefore, that the material facts set forth in the indictment may be considered, they show that the crime of which appellant was convicted involved moral turpitude, both by reason of fraud and perjury. (*United States ex rel. Popoff v. Reimer,* 79 F. 2d 513 C. C. A. 2, 1935); *Kaneda v. United States,* 278 Fed. 694 (C. C. A. 9, 1922).)

II.

Appellant's Conviction for Violating Title 26, United States Code, Section 145 (b) Was A Material Fact Which Appellant Was Under a Duty to Disclose in His Application for an Immigration Visa, Irrespective of Whether Such Crime Involves Moral Turpitude.

Appellant takes the position that if the crime of which he was convicted did not involve moral turpitude, it would not have been sufficient even if disclosed, to justify the refusal of a visa; and that therefore this conviction was not a material fact which appellant was under a duty to disclose in his application for an immigration visa. Appellee disagrees. The disclosure of this conviction, even if no moral turpitude was involved, would have been sufficient to justify the refusal of a visa, at least temporarily. The materiality of appellant's misrepresentation lies in the fact that it thwarted further inquiry by the officials charged with issuing visas, and prevented these officials from making a determination of whether the crime of which appellant was convicted involved moral turpitude. (*Ablett v. Brownell,* 240 F. 2d 625 (C. A. D. C., 1957); *Landon v. Clarke,* 239 F. 2d 631 (C. A. 1, 1956); *United States v. Flores-Rodriguez,* 237 F. 2d 405 (C. A. 2, 1956); *United States ex rel. Jankowski v. Shaughnessy,* 186 F. 2d 580 (C. A. 2, 1951); *cf. United States v. Montalbano,* 236 F. 2d 757, 759-760 (C. A. 3, 1956); *Corrado v. United States,* 227 F. 2d 780, 784 (C. A. 6, 1955), cert. den. 351 U. S. 925.)

The matter was aptly expressed in *United States ex rel Jankowski v. Shaughnessy, supra,* where the Court declared (p. 582):

> "* * * The misrepresentation and concealment were material. Had he disclosed those facts, they would have been enough to justify the refusal of a visa. *For surely they would have led to a temporary refusal, pending a further inquiry, the results of which might well have prompted a final refusal.*" (Emphasis added.)

The decisions of *United States ex rel. Iorio v. Day,* 34 F. 2d 920 (C. C. A. 2, 1929) and *United States ex rel. Leibowitz v. Schlotfeldt,* 94 F. 2d 263 (C. C. A. 7, 1938), upon which appellant relies, were distinguished in *Ablett v. Brownell, supra.* There, the Court declared, *inter alia* (p. 630):

> "* * * Both decisions appear to be premised on the point that, if the aliens had told the truth, they would nevertheless have been entitled to receive visas forthwith; certainly there is no indication that the truth would have prompted the consul to withhold a visa, pending investigation, in either case. *The crime in Iorio, unlike that here, was not one which would immediately raise the question of whether moral turpitude was involved.* * * *" (Emphasis added.)

III.

Appellant Was Under a Duty to Disclose His Conviction for Violating Title 26, United States Code, Section 145 (b) in His Application for an Immigration Visa, Notwithstanding the Fact That Such Conviction Was Upon His Plea of Nolo Contendere.

The fact that appellant's conviction was upon his plea of *nolo contendere* did not absolve him from the duty of disclosing such conviction upon his application for an immigration visa. In *United States ex rel. Bruno v. Reimer,* 98 F. 2d 92 (C. C. A. 2, 1938), an alien was ordered deported upon the ground that he had been twice sentenced to serve more than a year for crimes involving moral turpitude. He contended that since his first sentence, not being upon a plea of guilty but *nolo contendere,* was not a sentence and conviction within the meaning of the deportation statute. In rejecting this contention, the Court explained the nature of a conviction upon a plea of *nolo contendere* in the following language (pp. 92-93):

> "* * * It is true that the plea is not treated as a confession, which can be used against the accused elsewhere; but it gives the judge as complete power to sentence as a plea of guilty. (citation). And it is as conclusive of guilt for all purposes of prosecution under the indictment, (citations). Moreover, a sentence upon it is a conviction within the terms of a local statute applying to second offenders. (citation). The relator might succeed, therefore, if deportation depended upon his admission of *the commission of a crime,* as it may in the case of crimes committed before entry; but *since it depends upon conviction and sentence, conviction and sentence are the only relevant facts,* and the accused may be deported when-

ever these have been procured by any lawful procedure, as in this case they were." (Emphasis added.)

Similarly, in the case at bar, appellant stated in his visa application that he had never been *convicted,* not that he had never committed a crime. While under the decisions relied upon by appellant, he may not be estopped to proclaim his *innocence* in another proceeding, he was nevertheless under a duty to disclose his *conviction.*

IV.

The Phrase "Crime Involving Moral Turpitude" Has a Sufficiently Definite Meaning to Afford a Constitutional Standard for Deportation, Both on Its Face and as Applied to Appellant's Conviction for Violation of Title 26, United States Code, Section 145 (b).

In *Jordan v. De George,* 341 U. S. 223, 229-232 (1951), where the defendants had conspired to defraud the United States of taxes on distilled spirits, the Supreme Court held, with only one dissent, that the phrase "crime involving moral turpitude" was not void for vagueness, and that it had sufficiently definite meaning to be a constitutional standard for deportation.

Appellee submits that the same construction should be adopted in the instant case. While Section 145(b) of the Internal Revenue Code of 1939 does not mention fraud in specific language, the intent to defraud the United States is a prerequisite to conviction under this section. (*Spies v. United States,* 317 U. S. 492, 497, 498 (1943); *Legatos v. United States,* 222 F. 2d 678 (C. A. 9, 1955); *Bloch v. United States,* 221 F. 2d 786 (C. A. 9, 1955); *Wardlaw v. United States,* 203 F. 2d 884 (C. A. 5, 1953); *United States v. Raub,* 177 F. 2d 312 (C. A. 7, 1949); *United States v. Clark,* 123 Fed. Supp. 608 (S. D. Cal.,

1954). Appellant, having engaged in such fraudulent conduct, cannot contend that Congress had not sufficiently forewarned him by the phrase "crime involving moral turpitude" that the statutory consequence would be deportation.

While *Tan v. Phelan,* 333 U. S. 6 (1948) refers generally to resolving doubts in favor of the alien; even in a criminal case, where the doctrine of strict construction is well entrenched, the Supreme Court, in *United States v. Brown,* 333 U. S. 18 (1948) had occasion to declare (pp. 25-26):

> "* * * The canon in favor of strict construction is not an inexorable command to override common sense and evident statutory purpose. It does not require magnified emphasis upon a single ambiguous word in order to give it a meaning contradictory to the fair import of the whole remaining language. * * * it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers. * * *"

Conclusion.

Wherefore, for the reasons set forth above, it is respectfully submitted that the judgment of the District Court in favor of appellee, denying the relief prayed for in appellant's Complaint, should be affirmed.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,

JAMES R. DOOLEY,
Assistant U. S. Attorney,

Attorneys for Appellee.